

1 Kenneth A. Gallo (*pro hac vice*)
2 Paul D. Brachman (*pro hac vice*)
3 **PAUL, WEISS, RIFKIND, WHARTON & GARRISON**
4 **LLP**
5 2001 K Street, NW
6 Washington, DC 20006-1047
7 Telephone: (202) 223-7300
8 Facsimile: (202) 204-7420
9 Email: kgallo@paulweiss.com
10 Email: pbrachman@paulweiss.com

11 *Attorneys for Defendant Intuitive Surgical, Inc.*

12 [Additional Counsel Listed on Signature Page]

13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**
17

18 SURGICAL INSTRUMENT SERVICE
19 COMPANY, INC.,
20 *Plaintiff,*

21 v.

22 INTUITIVE SURGICAL, INC.,
23 *Defendant.*

Case No.: 3:21-cv-03496-AMO-LB

**JOINT STIPULATION AND [PROPOSED]
ORDER REGARDING PRETRIAL PROFFER
RELATED TO DEFENDANT'S MOTION *IN*
LIMINE NO. 1**

Judge: The Honorable Araceli Martínez-Olguín

1 Plaintiff Surgical Instrument Service Company, Inc. (“SIS”), and Defendant Intuitive
2 Surgical, Inc. (“Intuitive”) (collectively, the “Parties”) hereby stipulate as follows and respectfully
3 request that the Court endorse this stipulation with an order:

4 WHEREAS, on November 11, 2024, Intuitive filed its Motion *in Limine* No. 1 to Exclude
5 Out-of-Court Hospital Statements, Dkt. 290, which motion SIS opposed;

6 WHEREAS, the Court heard argument on Intuitive’s Motion *in Limine* No. 1 during the
7 Final Pretrial Conference on November 25, 2024;

8 WHEREAS, the Court entered a Minute Entry on November 26, 2024, ordering counsel
9 to meet and confer to present by December 3, 2024 a timeline for the submission of a pretrial
10 evidentiary proffer relating to the out-of-court statements that are the subject of Intuitive’s Motion *in*
11 *Limine* No. 1, Dkt. 316;

12 WHEREAS, counsel for the Parties have conferred as directed and agreed on a timeline;

13 NOW THEREFORE, the Parties jointly submit the Proposed Order attached hereto as
14 Exhibit A, which provides that:

15 1. SIS will file its pretrial evidentiary proffer regarding statements that are the subject of
16 Intuitive’s Motion *in Limine* No. 1 by no later than December 11, 2024.

17 2. Intuitive will file its response to such proffer by no later than December 20, 2024.

18
19
20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21
22 Dated: December 3, 2024

By: /s/ Richard T. McCaulley

Richard T. McCaulley (*pro hac vice*)

23
24 **MCCAULLEY LAW GROUP LLC**

180 N. Wabash Avenue, Suite 601

Chicago, Illinois 60601

25 Telephone: (312) 330-8105

26 E-Mail: richard@mccaulleylawgroup.com

JOSHUA V. VAN HOVEN (CSB No. 262815)
3001 Bishop Dr., Suite 300
San Ramon, California 94583
Telephone: (925) 302-5941
E-Mail: josh@mccaulleylawgroup.com

*Attorneys for Plaintiff Surgical Instrument
Service Company, Inc.*

Dated: December 3, 2024

By: /s/ Kenneth A. Gallo
Kenneth A. Gallo

Kenneth A. Gallo (*pro hac vice*)
Paul D. Brachman (*pro hac vice*)
**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**
2001 K Street, NW
Washington, DC 20006-1047
Telephone: (202) 223-7300
Facsimile: (202) 204-7420
Email: kgallo@paulweiss.com
Email: pbrachman@paulweiss.com

William B. Michael (*pro hac vice*)
Crystal L. Parker (*pro hac vice*)
Daniel A. Crane (*pro hac vice*)
**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
Email: wmichael@paulweiss.com
Email: cparker@paulweiss.com
Email: dcrane@paulweiss.com

Joshua Hill Jr. (SBN 250842)
**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**
535 Mission Street, 24th Floor
San Francisco, CA 94105
Telephone: (628) 432-5100
Facsimile: (628) 232-3101
Email: jhill@paulweiss.com

Sonya D. Winner (SBN 200348)

1 **COVINGTON & BURLING LLP**
2 415 Mission Street, Suite 5400
3 San Francisco, California 94105-2533
4 Telephone: (415) 591-6000
5 Facsimile: (415) 591-6091
6 Email: swinner@cov.com

7 Kathryn E. Cahoy (SBN 298777)
8 **COVINGTON & BURLING LLP**
9 3000 El Camino Real
10 5 Palo Alto Square, 10th Floor
11 Palo Alto, California 94306-2112
12 Telephone: (650) 632-4700
13 Facsimile: (650) 632-4800
14 Email: kcahoy@cov.com

15 Andrew Lazerow (pro hac vice)
16 **COVINGTON & BURLING LLP**
17 One City Center 850 Tenth Street NW
18 Washington DC 20001-4956
19 Telephone: (202) 662-6000
20 Facsimile: (202) 662-6291
21 Email: alazerow@cov.com

22 Allen Ruby (SBN 47109)
23 allen@allenruby.com
24 **ALLEN RUBY, ATTORNEY AT LAW**
25 15559 Union Ave. #138
26 Los Gatos, California 95032
27 Telephone: (408) 477-9690

28 *Attorneys for Defendant*
 Intuitive Surgical, Inc.

E-Filing Attestation

I, Kenneth A. Gallo, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above have concurred in this filing.

/s/ Kenneth A. Gallo

EXHIBIT A

[PROPOSED] ORDER REGARDING PROFFER RELATED TO DEFENDANT'S MOTION IN LIMINE NO. 1

On November 11, 2024, Defendant Intuitive filed its Motion *in Limine* No. 1 to Exclude Out-of-Court Hospital Statements, Dkt. 290, which motion Plaintiff SIS opposed. On November 26, 2024, having heard argument on the motion during the Final Pretrial Conference, the Court directed SIS to make a pretrial evidentiary proffer relating to the statements challenged by Intuitive in its Motion *in Limine* No. 1.

Pursuant to the Parties' stipulated agreement, the Court hereby orders that:

1. SIS will file its pretrial evidentiary proffer regarding statements that are the subject of Intuitive's Motion *in Limine* No. 1 by no later than December 11, 2024.

2. Intuitive will file its response to such proffer by no later than December 20, 2024.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated _____, 2024

BY THE COURT:

HON. ARACELI MARTÍNEZ-OLGUÍN
United States District Judge